IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5090 of 2003
with
SPECIAL CIVIL APPLICATION No 5092 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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RAJ EDUCATION & CHARITABLE TRUST

Versus

STATE OF GUJARAT THRO'SECRETARY

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Appearance:

1. Special Civil Application No. 5090 of 2003
MR TUSHAR MEHTA for Petitioner No. 1
Mr. Prachhak, AGP for Respondent No. 1-2
MR MM TIRMIZI for Respondent No. 3
MS SEJAL K MANDAVIA for Respondent No. 3
MR JJ YAJNIK for Respondent No. 4
NOTICE SERVED BY DS for Respondent No. 5

2. Special Civil Application No. 5092 of 2003
MR TUSHAR MEHTA for Petitioner No. 1
Mr. Prachhak, AGP for Respondent No. 1

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CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 21/07/2003

ORAL JUDGEMENT

The petitioner, namely, Shri Raj Education and Charitable Trust in Special Civil Application No. 5090 of 2003 and Shri Sadhna Education Trust in Special Civil Application No. 5092 of 2003 have challenged the legality, validity and propriety of the order dated 8th November 2001 passed by the respondent No.1 transferring the management of the School, namely Swami Vivekanand Vinay Mandir, the respondent No.5 herein, administered by Junagadh Municipal Corporation, the respondent No.3 herein to Shri Swaminarayan Gurukul, Rajkot, the respondent No.4 without following due procedure of law and in ex facie illegal and arbitrary exercise of power and in violation of Art. 14 of the Constitution of India. The petitioners have not only prayed for quashing and setting aside of the order dated 8.11.2001 but have also prayed for the mandatory direction, directing the respondent No.1 to transfer the management of the said respondent No.5 School to the petitioner Trust.

2. The petitioner, in Special Civil Application No. 5090 of 2003, is a Public Charitable Trust, imparting education in Primary Section in the City of Junagadh by running a School, namely, Prince Primary School, Junagadh. The said Trust is registered before the Charity Commissioner on 19th June 2000 and its PTR Number is E/4494/Junagadh. The said petitioner is running the Primary School and the competent authority under the Bombay Primary Education Act and the Rules framed thereunder had granted permission to start Standards 1 to 4 from the Academic Year 2001-2002. The said Trust was also permitted to start Class of Standard VII from 2002, as a result of its appeal having been allowed by the appellate authority.

3. The petitioner, in Special Civil Application No. 5092 of 2003, is also a Public Charitable Trust, and its main object is to impart education. This Trust is also registered with the Charity Commissioner on 16th September 1993 and its PTR Number is E/2796/Junagadh.

4. The brief facts, giving rise to the present petition, are that Swami Vivekanand Vinay Mandir is a registered Private Secondary School, as per Private Secondary School Register maintained by the Gujarat Secondary Education Board. It is the case of the petitioners that the erstwhile Junagadh Municipality was running the said School prior to 1960 and have successfully administered and managed the said school. The building of the said school is a historic monument

and is having a big background and the property including the land and building is worth Rs. 60 Crores. It is alleged by the petitioners that the respondents No. 1 and 2 wanted to transfer the management of the said School to respondent No.4 and therefore Special Civil Application No. 11911 of 2000 was filed by the erstwhile Junagadh Municipality before this Court. During the pendency of the said petition, the respondent No.1 has passed the impugned order dated 8.11.2001 actually transferring the management of respondent No.5 school to respondent No.4. The erstwhile Junagadh Municipality, therefore, amended the petition filed by it and pending before the court and stay was granted by this Court in Civil Application No. 12188 of 2001, vide order dated 12th November 2001. The said petition was admitted by this Court on 25th February 2002 and interim relief granted in Civil Application was continued till the disposal of the petition.

5. It is further stated that there is one more school, namely, Narsinh Vidya Mandir which was run and managed by the erstwhile Junagadh Municipality. The said school was also sought to be transferred to Saraswati Education and Charitable Trust, Junagadh. The erstwhile Junagadh Municipality, therefore, has preferred Special Civil Application No. 11498 of 2000 before this Court. The said petition was dismissed by the learned Single Judge of this Court. However, the appeal filed against said order being LPA No. 1158 of 2001 was admitted and the order transferring the management was stayed by the Division Bench of this Court.

6. It is further stated that both these matters were tagged and the same were pending for Final Hearing before this Court. Subsequently, however, the erstwhile Municipality was converted into Corporation and Administrator was appointed by the State Government. The Collector, Junagadh was appointed as Administrator and the Municipal Commissioner of Junagadh Municipal Corporation and he being an Officer of the State Government was acting at the behest of the State Government and he is directed to withdraw the abovereferred Special Civil Applications. It is therefore stated that it is in view of these special circumstances the present petitions were filed by two Public Charitable Trusts before this Court.

7. Mr. Tushar Mehta, the learned advocate appearing for the petitioners has submitted that the petitioners in both the petitions had approached this Court at a belated stage only because the petitioners were not aware about actually passing of the order of transfer of management

of the school. The petitioners were also not aware about the actual order of transfer of management. The petitioners came to know only on 20th March 2003 about the fact that the order transferring the management has actually been passed by the State Government and the said order was stayed by this Court in the writ petition filed by the respondent No.3 Municipality.

8. Mr. Mehta has further submitted that the action of the respondents No.1 and 2 authorities to transfer the said school in favour of the respondent No.4 is not at all justified nor it is in accordance with the provisions of the Gujarat Secondary Education Act and the Rules made thereunder. He has submitted that Section 33 of the said Act empowers the State Government to transfer the management of the registered Private Secondary School, however there are certain inbuilt hurdles provided by the Legislature. The State Government cannot take recourse to the said provision unless and until the management of the Private Secondary School is unable to perform any duty imposed under the Act as well as regulations. He has further submitted that there is an embargo that if the State Government feels that it is necessary in the public interest to take over the management of the school, then only after giving reasonable opportunity to the Manager of the school of showing cause against the proposed action and after properly and validly considering the same, such an action can be taken by the State Government. Thus, Section 33 of the Act does not confer any unguided and uncontrolled power to State Government to transfer the management of a school to any other school.

9. Mr. Mehta has further submitted that the State Government cannot exercise its powers to transfer the management of the school arbitrarily. He has further submitted that in the present case the State Government has neither followed the procedure nor the principles of equity and fairplay and the management of the respondent No.5 school was transferred to the respondent No.4. The action of the State Govt. is therefore highly arbitrary and violative of Art. 14 of the Constitution.

10. Mr. Mehta has further submitted that the petitioner is very much interested in taking over the management of the said school and even otherwise the petitioner is qualified to run private secondary school. He has further submitted that if the petitioner is permitted to take over the management of the school the students at present studying in the said school will be benefited. He has therefore submitted that the

management of the respondent No.5 school should be entrusted to the petitioner.

11. Mr. JJ Yagnik, ld. advocate appearing for respondent No.4 on the other hand strongly supported the order passed by the respondent No.1 authority. He has submitted that these two petitions filed by the two separate trusts are nothing but an attempt to abuse the process of law. He has further submitted that the petitioners have suppressed the material facts and made misleading statements in the petitions. The petitions were not filed with bonafide intentions and the petitioners have not come before the court with clean hands. He has further submitted that the respondent No.5 school was established by Bahadurkhan, who was the King of Junagadh. After independence, the said ex-Ruler of Junagadh has migrated to Pakistan and administration of the school came under the control of the Government. Previously the school was known as Boys School and on Junagadh Local Authority acquiring the status of Nagarpalika the Government had given administration of the school to Junagadh Nagarpalika on token rent for a period of 5 years and the school came to be renamed as Swami Vivekanand Vinay Mandir. The lease period of 5 years was renewed from time to time and lastly the lease period expired in the year 1999. When the said school was run by the Junagadh Nagarpalika the standard of education was very low and hence the Government, with a specific condition to improve the standard of education, extended the lease in the year 1999 only upto 30th June 2001. Even during that period also, the Nagarpalika could not improve the standard of administration and quality of education and hence the State Government issued a communication dated 3-2-2000 stating that if the result of 10th Standard is not improved, on and from 30th June 2001 the administration of the school shall not be allowed to continue with the Nagarpalika. Inspite of sufficient opportunities which were given by the State Government to the Nagarpalika, the school could not acquire better results and improve the standard of education. The State Government had no option but to decide to take-away the management of the school from the Nagarpalika.

12. Mr. Yagnik has further submitted that on coming to know that the State Government has decided to give on rent for a period of 5 years the management of the school for improvement of academic standard, the respondent No.4 made an application on 17.5.2000 to the State Government. He has further submitted that as far as the respondent No.4 is concerned, it runs at Junagadh, Ahmedabad,Surat,

Hyderabad,Charodi, New Mumbai, Navsari and several other places , at residential schools imparting education to thousands of students with higher academic standards. He has further submitted that apart from imparting education, the respondent No.5 has constructed 62 schools during Earthquake and various social works in other walks of life are being performed by the respondent No.4. He has further submitted that looking to the said performance and reputation of the respondent No.4, the State Government has decided to give school management to the respondent No.4. Mr. Yagnik has further submitted that one Capt. Satish had been the President of Junagadh Municipality and he was in-charge of the management of the school either directly or indirectly for more than 15 years. The said Mr. Satish with a view to use the huge property of respondent No.5 school tried to create some documents of tenancy in favour of these persons. However, he could not succeed and the State Government with a view to have better education had decided to give the management of the school for a period of 5 years to the respondent No.4, by an order dated 8.11.2001. Mr. Yagnik has further submitted that the Special Civil Application No. 11911 of 2000 filed by the erstwhile Junagadh Municipality was withdrawn on 20th April 2003. He has further submitted that Special Civil Application No. 11498 of 2000 was decided by the learned Single Judge of this Court [Coram: K.R. Vyas, J.] on 10.10.2001 and it was held therein that the transfer of the management of the school from the Municipality was absolutely just and proper as academic standard was not being maintained by the Municipality and the decision to transfer the said management to another charitable trust was upheld. Against the order of learned Single Judge, an LPA was preferred and the said LPA was also subsequently withdrawn. Mr Yagnik has therefore submitted that once the impugned order having been challenged by the Junagadh Municipality before this Court and once the same having been withdrawn, the present petitions filed by the petitioners challenging the said order of the respondent No.1 is nothing but an abuse of process of law and this Court should not permit the petitioners to raise such frivolous issues at the belated stage by invoking the powers and jurisdiction under Article 226 of the Constitution.

13. Mr. Prachhak, ld. AGP appearing for respondents No. 1 and 2 has stated that the State Government, after considering the merits of the issue has decided to transfer the management of the respondent No.5 school to the respondent No.4 trust and since the said decision was taken way back in November 2001 it is not open for the

petitioner to challenge the said decision before this Court in a petition under Art. 226 of the Constitution in the month of April 2003 and that too the petition filed by the Junagadh Municipality against this very order was withdrawn.

14. I have heard the learned advocates appearing for the respective parties and I have also considered the submissions made and contentions raised on their behalf. I have also given my anxious thoughts to the impugned order dated 8.11.2001 and other orders passed in earlier two petitions filed by the Junagadh Municipality. The very foundation of Mr. Mehta's argument that the respondent No.5 school is a private school run by the Junagadh Municipality is not accepted in view of the fact that the said school originally belonged to the King of Junagadh before independence and on his migration to Pakistan the management of the school came to be vested in the State Government and the State Government in turn has entrusted the management to the Nagarpalika. Thus, it cannot be termed as a private school and hence the provisions contained in Regulation 9 of Secondary Education Regulations 1974 are not applicable. Even Section 33 of Gujarat Higher Secondary Act, 1972, on which the reliance was heavily placed by Mr. Mehta, is applicable only to any private secondary school and hence the said provisions are required to be followed at the time of taking over the management of any private school. Since the respondent No.5 is not the Private Secondary School, there is no question of invoking the provisions contained in Section 33 of the Act. Mr. Mehta's further argument that the Government should not act arbitrarily in transferring the management of the respondent school to the respondent No.4 trust, is also not accepted, in view of the fact that there is no doubt or dispute about the capacity of the respondent No.4 trust. The said trust has got its own reputation and prestige, not only in the field of education but also in the field of other social services. The figures given in the affidavit-in-reply and the pamphlets and brochures attached therewith and the work that has been done by the respondent No.4 trust itself speaks volumes about the capacity and efficiency of the respondent No.4 trust. If the management of the respondent No.5 is given to such a well-renonuned trust, it cannot be said that the State Government has taken any arbitrary or unlawful decision. At the time when the impugned order was passed the application of respondent No.4 was very much pending before the State Government and the petitioners have come in the fray only after the petition filed by the Junagadh Municipality was withdrawn or about to be withdrawn. The

petitioner has not produced anything on record which even remotely appeals to this Court to consider its case for the purpose of transferring the management of the respondent No.5 school to the petitioner trust. Even if it is assumed that both the trusts have filed these two separate petitions before this Court showing their genuine desire or inclination to get the management of the respondent No.5 school, that by itself however, is not sufficient to pass any order in their favour in view of the competence and the very strong and convincing public record shown by the respondent No.4 trust. Since this Court is of the view that the State Government has taken the decision in the best interest of the students at large, and also for furtherance of the very broad object of education, this Court does not think it fit and proper to interfere in the said order, while exercising the extraordinary writ jurisdiction under Article 226 of the Constitution of India. None of the contentions raised by the petitioners in the present petitions is having substance or merit and hence both the petitions are rejected. Notice is discharged in each of these petitions, without any order as to costs.

15. At this juncture, Mr. Tushar Mehta, learned advocate appearing for the petitioners submits that the order passed by this Court today may be stayed for one week so as to enable the petitioners to approach the higher forum. Mr. JJ Yagnik, learned advocate appearing for the respondent No.4 has, however, objected to the said request. Ultimately, after some discussion, Mr. Yagnik submitted that the statement which he has made before the Division Bench in Letters Patent appeal No. 4772 of 2003 on 30.6.2003 to the effect that the respondent No.4 will not take possession of the School till 16.7.2003, would continue to operate till 23rd July 2003.

rmr. [ K.A. Puj, J. ]